

PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2060

(Reference to House engrossed bill)

Strike everything after the enacting clause and insert:

“Section 1. Section 38-711, Arizona Revised Statutes, is amended to read:

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, **AT THE MEMBER'S ELECTION EITHER:**

(i) THE MONTHLY AVERAGE OF COMPENSATION CALCULATED PURSUANT TO SUBDIVISION (b) OF THIS PARAGRAPH.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to

1 ASRS or that falls within a period of nonpaid or partially paid leave of
2 absence or sabbatical leave shall be excluded from the computation. The
3 sixty consecutive months may entirely precede, may be both before and after
4 or may be completely after any excluded months. If the member was employed
5 for less than sixty consecutive months, the average monthly compensation is
6 based on the total consecutive months worked. Payments for accumulated
7 vacation or annual leave, sick leave, compensatory time or other forms of
8 termination pay which, ~~prior to the effective date of the amendment to this~~
9 ~~section~~ BEFORE AUGUST 12, 2005, constitute compensation for members whose
10 membership in ASRS commenced before January 1, 1984, do not cease to be
11 included as compensation if paid in the form of nonelective employer
12 contributions under a 26 United States Code section 403(b) plan ~~so long as~~ IF
13 all payments of employer and employee contributions are made at the time of
14 termination. Contributions shall be made to ASRS on these amounts pursuant
15 to sections 38-735, 38-736 and 38-737.

16 (b) ~~Effective July 1, 1985~~ FOR A MEMBER WHOSE MEMBERSHIP IN ASRS
17 COMMENCED ON OR AFTER JANUARY 1, 1984, BUT BEFORE JULY 1, 2009, the monthly
18 average of compensation on which contributions were remitted during a period
19 of thirty-six consecutive months during which a member receives the highest
20 compensation within the last one hundred twenty months of credited service.
21 Any month for which no contributions are reported to ASRS or that falls
22 within a period of nonpaid or partially paid leave of absence or sabbatical
23 leave shall be excluded from the computation. The thirty-six consecutive
24 months may entirely precede, may be both before and after or may be
25 completely after any excluded months. If the member was employed for less
26 than thirty-six consecutive months, the average monthly compensation shall be
27 based on the total consecutive months worked. ~~This subdivision applies only~~
28 ~~to members whose membership in ASRS was effective after December 31, 1983 or~~
29 ~~who agree in writing as a binding condition of eligibility for being granted~~
30 ~~the benefit advantages available under this subdivision to have their benefit~~
31 ~~computed on the basis of the definition of compensation.~~

(c) FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY 1, 2009, THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE REMITTED DURING A PERIOD OF SIXTY CONSECUTIVE MONTHS DURING WHICH A MEMBER RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY MONTHS OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE SIXTY CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS. IF THE MEMBER WAS EMPLOYED FOR LESS THAN SIXTY CONSECUTIVE MONTHS, THE AVERAGE MONTHLY COMPENSATION SHALL BE BASED ON THE TOTAL CONSECUTIVE MONTHS WORKED.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer. Compensation, as provided in paragraph 5, subdivision (b) OR (c) of this section, does not include:

(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific

1 period of time. If the amount directed to be paid is less than the actual
2 salary or wages that would have been paid for the period if service had been
3 performed, the contributions for the period shall be based on the amount of
4 compensation that would have been paid if the service had been performed.

5 (c) Payment, at the member's option, in lieu of fringe benefits that
6 are normally paid for or provided by the employer.

7 (d) Merit awards pursuant to section 38-613 and performance bonuses
8 paid to assistant attorneys general pursuant to section 41-192.

9 8. "Contingent annuitant" means the person named by a member to
10 receive retirement income payable following a member's death after retirement
11 as provided in section 38-760.

12 9. "Credited service" means, subject to section 38-739, the number of
13 years standing to the member's credit on the books of ASRS during which the
14 member made the required contributions.

15 10. "Current annual compensation" means the greater of:

16 (a) Annualized compensation of the ~~full~~ TYPICAL pay period AMOUNT
17 immediately before the date of a request to ASRS to purchase credited service
18 pursuant to section 38-743, 38-744 or 38-745. THE TYPICAL PAY PERIOD AMOUNT
19 SHALL BE DETERMINED BY TAKING THE FIVE PAY PERIODS IMMEDIATELY BEFORE THE
20 DATE OF REQUEST, DISREGARDING THE HIGHEST AND LOWEST COMPENSATION AMOUNT PAY
21 PERIODS, AND AVERAGING THE THREE REMAINING PAY PERIODS.

22 (b) Annualized compensation of the partial year, DISREGARDING THE
23 FIRST COMPENSATION AMOUNT PAY PERIOD, if the member has less than twelve
24 months total credited service on the date of a request to purchase credited
25 service pursuant to section 38-743, 38-744 or 38-745.

26 (c) The sum of the twelve months of compensation immediately before
27 the date of a request to ASRS to purchase credited service pursuant to
28 section 38-743, 38-744 or 38-745.

29 (d) The sum of the thirty-six months of compensation immediately
30 before the date of a request to ASRS to purchase credited service pursuant to
31 section 38-743, 38-744 or 38-745 divided by three.

1 (e) If the member has retired one or more times from ASRS, the average
2 monthly compensation that was used for calculating the member's last pension
3 benefit times twelve.

4 11. "Early retirement" means retirement before a member's normal
5 retirement date after five years of total credited service and attainment of
6 age fifty.

7 12. "Effective date" means July 1, 1970, except with respect to
8 employers and members whose contributions to ASRS commence thereafter, the
9 effective date of their membership in ASRS is as specified in the applicable
10 joinder agreement.

11 13. "Employer" means:

12 (a) This state.

13 (b) Participating political subdivisions.

14 (c) Participating political subdivision entities.

15 14. "Employer contributions" means all amounts paid into ASRS by an
16 employer on behalf of a member.

17 15. "Fiscal year" means the period from July 1 of any year to June 30
18 of the following year.

19 16. "Inactive member" means a member who previously made contributions
20 to ASRS and who satisfies each of the following:

21 (a) Has not retired.

22 (b) Is not eligible for active membership in ASRS.

23 (c) Is not currently making contributions to ASRS.

24 (d) Has not withdrawn contributions from ASRS.

25 17. "Interest" means the assumed actuarial investment earnings rate
26 approved by the board.

27 18. "Internal revenue code" means the United States internal revenue
28 code of 1986, as amended.

29 19. "Investment management" means the persons, companies, banks,
30 insurance company investment funds, mutual fund companies, management or any
31 combinations of those entities that are appointed by ASRS and that have
32 responsibility and authority for investment of the monies of ASRS.

1 20. "Late retirement" means retirement after normal retirement.

2 21. "Leave of absence" means any unpaid leave authorized by the
3 employer, including leaves authorized for sickness or disability or to pursue
4 education or training.

5 22. "Life annuity" means equal monthly installments payable during the
6 member's lifetime after retirement.

7 23. "Member":

8 (a) Means any employee of an employer on the effective date.

9 (b) Means all employees of an employer who are eligible for membership
10 pursuant to section 38-727 and who are engaged to work at least twenty weeks
11 in each fiscal year and at least twenty hours each week.

12 (c) Means any person receiving a benefit under ASRS.

13 (d) Means any person who is a former active member of ASRS and who has
14 not withdrawn contributions from ASRS pursuant to section 38-740.

15 (e) Does not include any employee of an employer who is otherwise
16 eligible pursuant to this article and who begins service in a limited
17 appointment for not more than eighteen months on or after July 1, 1979. If
18 the employment exceeds eighteen months, the employee shall be covered by ASRS
19 as of the beginning of the nineteenth month of employment. In order to be
20 excluded under this subdivision, classifications of employees designated by
21 employers as limited appointments must be approved by the director.

22 (f) Does not include any leased employee. For the purposes of section
23 414(n) of the internal revenue code, "leased employee" means an individual
24 who:

25 (i) Is not otherwise an employee of an employer.

26 (ii) Pursuant to a leasing agreement between the employer and another
27 person, performs services for the employer on a substantially full-time basis
28 for at least one year.

29 (iii) Performs services under the primary direction or control of the
30 employer.

31 24. "Member contributions" means all amounts paid to ASRS by a member.

1 25. "Normal costs" means the sum of the individual normal costs for all
2 active members for each fiscal year. The normal cost for an individual
3 active member is the cost that is assigned to the fiscal year using the
4 projected unit credit method.

5 26. "Normal retirement age" means the age at which a member reaches the
6 member's normal retirement date.

7 27. "Normal retirement date" means the earliest of the following:

8 (a) A member's sixty-fifth birthday.

9 (b) A member's sixty-second birthday and completion of at least ten
10 years of credited service.

11 (c) The first day that the sum of a member's age and years of total
12 credited service equals eighty.

13 28. "Political subdivision" means any political subdivision of this
14 state and includes a political subdivision entity.

15 29. "Political subdivision entity" means an entity:

16 (a) That is located in this state.

17 (b) That is created in whole or in part by political subdivisions,
18 including instrumentalities of political subdivisions.

19 (c) Where a majority of the membership of the entity is composed of
20 political subdivisions.

21 (d) Whose primary purpose is the performance of a government related
22 service.

23 30. "Retired member" means a member who is receiving retirement
24 benefits pursuant to this article.

25 31. "Service year" means fiscal year, except that:

26 (a) If the normal work year required of a member is less than the full
27 fiscal year but is for a period of at least nine months, the service year is
28 the normal work year.

29 (b) For a salaried member employed on a contract basis under one
30 contract, or two or more consecutive contracts, for a total period of at
31 least nine months, the service year is the total period of the contract or
32 consecutive contracts.

1 (c) In determining average monthly compensation pursuant to paragraph
2 5 of this section, the service year is considered to be twelve months of
3 compensation.

4 32. "State" means this state, including any department, office, board,
5 commission, agency, institution or other instrumentality of this state.

6 33. "Vested" means that a member is eligible to receive a future
7 retirement benefit.

8 Sec. 2. Section 38-765, Arizona Revised Statutes, is amended to read:

9 38-765. Errors; benefit recomputation

10 If any change or error in the records results in any member or
11 beneficiary receiving from ASRS more or less than the member or beneficiary
12 would have been entitled to receive if the records had been correct, the
13 board shall correct the error and as far as practicable shall adjust the
14 payments in a manner so that the actuarial equivalent of the benefit to which
15 the member or beneficiary was correctly entitled is paid. The board shall
16 correct any change or error and shall pay the appropriate monies to a member
17 or beneficiary or shall recover monies from the member or beneficiary if the
18 member or beneficiary is overpaid. ASRS SHALL RECOVER MONIES BY REDUCING ANY
19 BENEFIT OTHERWISE PAYABLE BY ASRS OR THE LTD PROGRAM ESTABLISHED BY ARTICLE
20 2.1 OF THIS CHAPTER TO AN ACTIVE, INACTIVE, DISABLED OR RETIRED MEMBER,
21 SURVIVOR, CONTINGENT ANNUITANT, BENEFICIARY OR ALTERNATE PAYEE."

22 Amend title to conform

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3/27/08
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